

ATTORNEY GENERAL'S USE OF DEADLY FORCE REPORT APPENDICES

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APPENDIX

I

ROSTER OF MEMBERS ON THE TASK FORCE

Steering Committee:

Hardy Myers, Attorney General, Department of Justice
Peter Shepherd, Deputy Attorney General, Department of Justice
Ronelle Shankle, Policy, Project and Legislative Coordinator, Department of Justice
Chief Derrick Foxworth, Portland Police Bureau
Erik Wasmann, AIC, Criminal Justice DA Assistance, Department of Justice
Lieutenant Colonel Tim McLain, Oregon State Police
Lieutenant Glenn Chastain, Oregon State Police
Eriks Gabliks, Training Division, Department of Public Safety Standards and Training
Lorraine Anglemier, Interim Legal Services Coordinator, Department of Public Safety Standards and Training
Kevin Campbell, Oregon Association of Chiefs of Police
Sheriff Raul Ramirez, Marion County
Michael Dugan, District Attorney, Deschutes County
Gary Williams, District Attorney, Crook County
Timothy Wood, Chief Counsel, Trial Division, Department of Justice
Chief Richard E. Lewis, Silverton Police Department
John Minnis, Director, Department of Public Safety Standards and Training
Connie Gallagher, Director, Crime Victims Assistance Section, Department of Justice

Civil Liability Subcommittee:

Timothy Wood, Chief Counsel, Trial Division, Department of Justice
David Woboril, Deputy City Attorney, City of Portland
William G. Blair, Senior Assistant County Counsel, Washington County
Captain George Babnick, Training Division, Portland Police Bureau

Community Outreach/Communications:

Sheriff Raul Ramirez, Marion County
Lieutenant Troy Clausen, Marion County
Richard Brown, Citizen and Community Representative
Sheriff David Burright, Linn County
Danny Santos, Office of the Governor
Mark Landauer, City of Portland
Former Representative Joe Smith, Community Representative
Chief Larry Kanzler, Milwaukie Police Department
Chief Ronald Louie, Hillsboro Police Department
Sheriff Bernie Giusto, Multnomah County
Chief Derrick Foxworth, Portland Police Bureau
Dr. T. Allen Bethel, Albina Ministerial Alliance
Officer Victoria Burton, Northeast Precinct, Portland Police Bureau
Brian Schmutz, Public Information Officer, Portland Police Bureau

ROSTER OF MEMBERS ON THE TASK FORCE

District Attorney Subcommittee:

Michael Dugan, District Attorney, Deschutes County
Robert Bletko, Deputy District Attorney, Washington County
James McIntyre, Deputy District Attorney, Multnomah County
Commander Steve Bechard, Detective Division, Portland Police Bureau
Gary Williams, District Attorney, Crook County
Robert Lane, Deputy District Attorney, Lane County
Gregory Horner, Deputy District Attorney, Clackamas County
Donald Abar, Deputy District Attorney, Marion County
Assistant Chief James Ferraris, Investigations Branch, Portland Police Bureau

Individual Impact Subcommittee:

Connie Gallagher, Director, Crime Victims Assistance Program, Department of Justice
Mary Elledge, Chapter Leader, Parents of Murdered Children
Suzanne Isham, Regional Training Supervisor, Department of Public Safety
Standards and Training
Chief Brian Martinek, Vancouver Police Department
Martha McMurry, Citizen and Community Representative
Steve Doell, President, Crime Victims United
Chaplain Russ Guppy, Metro Interagency Police Chaplain
Lieutenant Colonel Tim McLain, Oregon State Police
Helen Smith, Director of Victims Assistance, Multnomah County
District Attorney's Office
Chaplain Ed Stelle, Multnomah County Sheriff's Department
Joan Schweizer Hoff, Program Director, The Dougy Center
Maria Ortiz, Citizen and Community Representative
Commander Brett Smith, Portland Police Bureau
Detective Jeanne Stevenson, East Precinct, Portland Police Bureau

Investigation Subcommittee:

Erik Wasmann, AIC, Criminal Justice DA Assistance, Department of Justice
Lieutenant Ron Schwartz, Portland Police Bureau
Larry Findling, Investigator, Clackamas County DA's Office
Sergeant Ed Brumfield, Portland Police Bureau
Assistant Chief Jim Ferraris, Investigations Branch, Portland Police Bureau
Lieutenant Kurt Barthel, Oregon State Police
Captain Calvin Curths, Oregon State Police
Glen Scruggs, President, Tigard Police Officers Association
Captain Tim Edwards, Deschutes County Sheriff's Office
Commander Steve Bechard, Detective Division, Portland Police Bureau

ROSTER OF MEMBERS ON THE TASK FORCE

Labor Issues Subcommittee:

Brian DeLashmutt, Oregon Council of Police Associations
William Aitchison, Attorney at Law, Aitchison and Vick Inc.
C. Akin Blitz, Attorney at Law, Bullard, Smith Jernstedt, Wilson
Assistant Chief James McDaniel, Services Branch, Portland Police Bureau
Captain James Maciag, Portland Police Bureau
Kevin Campbell, Oregon Association of Chiefs of Police
Bill Cross, Oregon State Police Officers Association
Daryl S. Garrettson, Attorney at Law, Garrettson, Goldberg, Fenrich & Makler
Robert King, President, Portland Police Association

Training Subcommittee:

Lorraine Anglemier, Interim Legal Services Coordinator, Training Division,
Department of Public Safety Standards and Training
Chief Richard E. Lewis, Silverton Police Department
Assistant Chief James McDaniel, Portland Police Bureau
Commander Michael Crebs, Transit Police Division, Portland Police Bureau
Eriks Gabliks, Training Division, Department of Public Safety Standards and Training
Brian Harvey, Training Division, Department of Public Safety Standards and Training
Lieutenant Glenn Chastain, Oregon State Police
Captain George Babnick, Portland Police Bureau
Assistant Chief Stan Grubbs, Portland Police Bureau

APPENDIX

II

**PARTIAL DATA COLLECTED
BY DEPARTMENT OF JUSTICE
JULY 2003**

AGENCY	DEADLY FORCE IN LAST 5 YEARS NO DEATH	DEADLY FORCE IN LAST 5 YEARS CAUSING DEATH	BIENNIAL AVERAGE WITH DEATHS	BIENNIAL AVERAGE NO DEATHS	TOTAL	SOURCE
POLICE	61	8	3.2	24.4	27.6	OACP (incomplete data)
SHERIFFS	30	6	2.4	12.0	14.4	OSSA (minus some large counties)
OSP	16	6	2.4	6.4	8.8	OSP
DOC	4	1 per decade	0.2	1.6	1.8	ODOC
COUNTY JAIL	8	2	0.8	3.2	4.0	OSSA
DOJ	0	0	0	0	0	DOJ

As reported to Judiciary Committee 2003 Legislative Session

Use of Force 2004 Survey Results

Oregon State Sheriff's Association: 18 Counties reporting
Oregon Associated Chiefs of Police: 36 Cities reporting

NOTE: This summary chart is the result of a compilation of data volunteered through an informal survey process at the beginning of our task force meetings and is not intended to be a complete statistical analysis.

1. Does your agency have a use of force policy up to and including the use of deadly force (including appropriate use of force, scene management, deadly use of force investigations, etc.)?				
Responding:	YES	NO	Unknown	Comments
Sheriff's Association	94.4%	5.6%		1 city reporting has policy but not yet adopted
Chiefs of Police	92%	6%	3%	2 cities no policy; 1 city needs more specifics

2. Does your agency have a pre-agreement with the union regarding incidents involving use of deadly force by an officer?				
Responding:	YES	NO	Unknown	Comments
Sheriff's Association	22.2%	72.2%	5.6%	4 counties yes; 1 county yes, but nonspecific
Chiefs of Police	25%	61%	14%	9 cities have some form of coordination with union

3. Does your District Attorney have an established policy for handling situations involving the use of deadly force by an officer?				
Responding:	YES	NO	Unknown	Comments
Sheriff's Association	50%	44.4%	5.6%	Majority responding yes assign to major crime team
Chiefs of Police	61%	25%	14%	Varying policies; many provide for major crime team investig.

4. Does your agency have a community outreach strategy designed to prepare and educate key community leaders in the use of force?				
Responding:	YES	NO	Comments	
Sheriff's Association	33.3%	66.7%	Community outreach strategies include Citizen Academy forums, coordination with city councils and informal lines of communication with community groups.	
Chiefs of Police	19%	81%		

5. Do you believe DPSST Use of Force training (basic academy) is adequate?				
Responding:	YES	NO	Unknown	Comments
Sheriff's Association	61.1%	33.3%	5.6%	Many felt initial training adequate, but continued training in specific areas would be helpful.
Chiefs of Police	56%	25%	7%	

6. Does your agency conduct/arrange for ongoing officer training (post basic) in the use of force/deadly force?				
Responding:	YES	NO	Combined	Comments
Sheriff's Association	100%			
Chiefs of Police	100%			

7. Please list any incidents of use of force involving serious injury or death over the last 3 years.				
Responding:	No Incidents	Resulting in Death	Resulting in Injury	Comments
Sheriff's Association	61%	10 incidents	3 incidents	
Chiefs of Police	92%	5 incidents	0 incidents	

8. What do you believe is the greatest challenge to law enforcement related to the use of force?		
Challenges reported:	Sheriff's Association No. of Comments	Chiefs of Police Number of Comments
1. Public perception and treatment by the media	10	22
2. Challenges related to training – more training needed; need to balance use safety of public with safety of officers; too many alternatives puts officers at risk	5	16
3. Liability and litigation concerns	2	3
4. Need for consistent policies	0	3



Cover page for Hillsboro report; complete report available from Hillsboro Police Department

MEMORANDUM

DATE: 20040827

TO: Ron Louie, Chief
Andy Schroder, Commander

FROM: Vince Alexander, Project Manager
Marcie Merritt, Volunteer

SUBJECT: Use of Force Analysis

Summary:

- These 153 reports were from incidents dating from 4/23/1999 thru 6/23/2003 with 150 of them between 4/13/2002 to 6/23/2003
- The 153 Use of Force cases represent only 0.1% of the 124,182 calls for service for the study period.
- Seven (7) officers out of 54 (13%) accounted for 33% of the reports.
- In only 50% of the cases were subjects lodged (taken to jail); it is probable that more were issued a citation on scene instead of being taken to jail.
- The slight majority of use of force incidents involved the higher levels of force, pointing a firearm at another and serious physical control.
- We see that officers with 0 - 4 years of service use the most physical force. It has been noted in other studies that less experienced officers are more likely to report force. This group's use of force may be tied to training and experience issues. As in other studies without documenting the frequency or level of citizen resistance we don't know whether this can be attributed to citizen behavior or to officer training and experience. Officers with less experience are more likely to be assigned to patrol, have more community to police contacts, and incur more citizen complaints.

APPENDIX

III



DEPARTMENT OF JUSTICE

AG TASK FORCE - USE OF DEADLY FORCE
LEGAL SUMMARY

RE: Use of Deadly Force by an Officer – Federal Civil Cases Under §1983

In *Tennessee v. Garner*, 471 US 1 (1985) the Supreme Court held that “apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.” See also *Graham v. Connor*, 490 US 386, 395 (1989) (“all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach”). The *Garner* Court advised that the use of deadly force to prevent a suspect from fleeing is constitutionally reasonable if the officer has probable cause to believe that the suspect either poses a threat of serious physical harm to the officer or others, or has committed a crime involving the infliction or threatened infliction of serious physical harm. The Court also indicated that a warning should be given, if feasible.

Two Ninth Circuit cases have interpreted the rule regarding the use of deadly force announced by the Supreme Court in *Garner*. In *Forrett v. Richardson*, 112 F3d 416 (1997), cert denied 523 US 1049, the Ninth Circuit held that the officers were justified in using deadly force to prevent the escape of a suspect who had committed a violent residential burglary. In contrast, the court concluded in *Harris v. Roderick*, 126 F3d 1189 (1997) that federal agents were not justified in using deadly physical force against an individual who was given no warning and no opportunity for surrender, even though the individual was believed to have shot and killed an agent.

Each of the cases applying *Garner* involved the question of whether, under the particular circumstances established by the evidence, the use of deadly force by an officer constituted an unreasonable use of force under the Fourth Amendment, thereby subjecting the officer and the officer’s agency to **civil liability** in an action brought under §1983. Accordingly, these cases do not directly address the question of which uses of deadly force should also subject the officer to criminal prosecution.

Moreover, these cases were decided in particular fact-specific contexts and do not establish a clear standard under the Fourth Amendment that is applicable to all circumstances under which an officer might legitimately use deadly force. Even taken together, the cases do not establish a single succinct standard that would suffice as a model for a criminal statute.

OFFICER INVOLVED LETHAL FORCE INCIDENT PROTOCOL MAJOR CRIME TEAM

Coos County

Introduction

It is the purpose of this protocol to:

1. standardize the investigation of officer involved incidents involving the use of deadly physical force by law enforcement and in-custody deaths;
2. to clarify the roles of different agencies in investigations involving the use of deadly physical force by law enforcement;
3. assure that investigative facts are promptly and accurately reported to satisfy the needs of the public, the justice system, any involved agency to know precisely "what happened" when the police use deadly physical force or a person dies in police custody; and
4. maintain public faith in law enforcement and the justice system by assuring that independent investigations will occur when the police use deadly physical force or when a person dies in police custody.

The protocol is loosely based on the International Association of Chief's of Police model policy developed by the Las Vegas Metro Police Department. It has been modified to meet the requirements of Coos County under the direction of the Coos County District Attorney's Office.

Roles of Agencies in a Lethal Force Incident

A "**lethal force incident**" is an incident in which a police officer or employee of SCINT, the Medical Examiner's Office or the District Attorney's office, in the line of duty, uses deadly physical force against a citizen. Actual injury need not occur. "**Deadly physical force**" is defined as physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. "**Serious physical injury**" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

The law enforcement community of Coos County is diverse. In addition to our city, county and state agencies, there are many federal agencies that enforce federal and state regulations within the county. The Forest Service, Bureau of Land Management, Federal Bureau of Investigation, United States Marshal's Service, Drug Enforcement Administration, Postal Inspectors and the United States Coast Guard are some of the federal agencies that operate in Coos County.

It is unclear whether and when Coos County law enforcement agencies would have any jurisdiction over conduct by federal officers. We should, however, stand ready to assist in the investigation of cases in which federal officers use lethal force.

When any law enforcement agency or other agency that may use lethal force in the line of duty, such as SCINT or the Medical Examiners Office, is involved in a lethal force incident, the District Attorney shall designate another department to lead the investigation into the incident. The involved agency, other than cooperating with the

OFFICER INVOLVED LETHAL FORCE INCIDENT PROTOCOL MAJOR CRIME TEAM

investigation by answering question of investigators and turning over records and evidence, will not participate in the investigation. If an employee of the DA's office is involved in a lethal force incident, the lead investigative agency shall be the Oregon State Police, who may bring in investigators from outside the area. All prosecutorial decisions will be made either by the Attorney General's Office or another District Attorney's Office.

Jurisdiction

It is the policy of the Coos County District Attorney's Office, and of the Chiefs of Police, Sheriff, and Station Commander of the Oregon State Police Office in Coos Bay, that a separate agency from the one involved in the incident will be the Lead Case Agency working in cooperation with the District Attorney's Office. (For example: A Myrtle Point police officer shoots a suspect, and he dies. The District Attorney may ask the Coos Bay Police Department to act as the Lead Investigating Agency. If Coos Bay consents, they will lead the investigation, working with the District Attorney's Office and the rest of the Major Crime Team. Myrtle Point P.D. would not participate in the investigation, other than by handing over evidence and cooperating with investigators handling the incident. It should be the policy of the involved agency to not interfere with the investigation so that a fair and balanced investigation can be obtained free of accusations of cover-up and partiality.

Press Releases and Confidentiality of Investigation.

It is the responsibility of the District Attorney's office to work with the Lead Investigating Agency and with the involved agency to assure that accurate press releases are put forth in a timely manner. Officer involved lethal force incidents are a matter of grave public concern and every effort should be made to accurately portray the incident to the press and public as quickly as possible.

It shall be the responsibility of administrator of the Lead Investigating Agency and the District Attorney, in conjunction with the administrator of the involved agency, to release any information regarding an investigation to the media. They will coordinate the release of any such information and will be the final arbiters of the content of any such releases. If they cannot agree on a release, any agency may make its own release. No other agency or agency member will discuss the case with the media in any manner, including but not limited to, any background or "off the record" discussions.

To protect the integrity and effectiveness of an investigation and to insure fairness and privacy for all concerned, each member of the Major Crime Team must keep confidential any investigative facts and actions of the Major Crime Team. No member will discuss an investigation with any person other than Major Crime Team members without first obtaining permission from the lead investigating officer or the member's agency head. This includes any police officer that is not a member of the Major Crime Team. When permission to discuss the case with a non-team member is allowed, the team member will advise the non-team member that the discussion must be kept confidential.

OFFICER INVOLVED LETHAL FORCE INCIDENT PROTOCOL MAJOR CRIME TEAM

Officer Involved Agency Responsibilities

Officer/Employee Involved Duties

The officer or employee involved should follow their department policy regarding such incidents, which may include:

- Notify Dispatch of the event.
- Notification should include:
 - o Medical assistance needed?
 - o The employee's status (injured or not)
 - o Status of others involved
 - o Supervisor to respond
 - o Additional units of patrol
 - o Advise of continuing situational threat level
- Advise if suspect(s) at large
- Mental note of witnesses present
- Brief the initial responding unit
 - o Is it a static or dynamic scene?
- Brief synopsis of event in order to establish perimeter of scene
- May participate in "walk through" with investigators
- Make weapons, magazines, evidence available for examination
- Permit stand-up photographs to be taken (may be taken at secondary location)

Supervisor responsibilities

- Confirm that all notifications are made
 - o Sheriff/Chief, Major Crime Team, District Attorney, M.E.
- Remove employees from public/press scrutiny (nearby so investigators have access to them.)
- Determine if additional staffing is needed
- Command Post for incident
- Coordinate briefing by on-scene personnel
- Coordinate initial investigation at scene

Investigative Guidelines

In order to preserve the integrity of the investigation and to avoid any appearance of "cover-up," favor or impropriety, the involved agency, other than as stated above, should not participate in the investigation of the incident. The involved agency should be careful not to interfere with the Major Crime Team investigation. Any questioning of an involved officer or employee his agency should follow Garrity guidelines, and should not

OFFICER INVOLVED LETHAL FORCE INCIDENT PROTOCOL MAJOR CRIME TEAM

occur until the Major Crime Team has concluded its interviews with the involved officer(s).

Standard investigative techniques shall be utilized in the investigation of an officer-involved incident. The investigation should be conducted in such a manner as to find out who, what, when, where, and how the incident happened. It is not the purpose of the investigation to fix blame for an incident, but to investigate its mechanics. The spirit of the Department of Public Safety Standards and Training and their use of force instruction to police officers should be used in the investigation. Reasonable perceptions by involved officer(s) as to the threats they face at the time of the incident are of critical importance to the investigation.

Some of the investigative guidelines are:

- ***Countdown of the weapon(s) and their magazine(s) and duty ammunition.***
 - Ask how the officer carries the weapon, how many rounds he carries, the condition of the weapon at the time of the incident. Some departments have a certain number of rounds in each magazine.
 - Account for all rounds fired
 - Be aware that the officer's recollection of how many rounds were fired is not always correct.
 - This information is evidence.
- ***Photograph the officer(s) involved.***
 - To show how the officer was dressed as officers may be in uniform, plain clothes, S.W.A.T. uniform, or special duty wear.
 - Can be done away from the scene
 - Shows officer's authority and identity as a police officer when the incident occurred (e.g. displaying a badge.)
- ***Weapon(s) may be impounded and tested***
- ***Officer(s) may be placed on administrative leave by their department according to individual department policies.***
- ***Officer may be asked to participate in a video walk through***
 - This is not a re-creation
 - Footage should not be changed or edited
 - Will be used to assist in the investigation and presentation to the District Attorney.
- ***Interview of the involved officers***
 - No reports should be written by the involved officer(s)
 - An interview by two members of the Major Crime Team shall be done with the involved officer(s).
 - If more than one involved officer, they shall be interviewed separately.

OFFICER INVOLVED LETHAL FORCE INCIDENT PROTOCOL MAJOR CRIME TEAM

- It is understood that local departments may have employee unions and the involved officer(s) may want representation. This should not be a problem and *Garrity v. New Jersey* issues shall be addressed individually as they come up. *Miranda* warnings need not be given unless the involved officer or employee is in custody.
- ***Interview of witnesses***
 - To include all of those who were at the scene or have relevant information regarding the incident.
- ***Forensic evidence collection at the scene and from equipment***
 - May be either the Coos County Evidence Collection Team or the Oregon State Police Crime Lab. If collected by Coos Evidence Collection Team, members of the involved agency will not participate in evidence collection.
 - Evidence collected and stored as per Major Crime Team protocol.

Investigative Agency responsibilities

As in every Major Crime Team callout, the lead investigative agency will oversee the entire investigation of the incident. In an officer involved lethal force incident the case agency/officer will present the investigation to the District Attorney. The presentation may include PowerPoint, maps, diagrams, survey charts, photographs and reports. A similar presentation will be made to the head of the involved agency. If the head of the involved agency and the District Attorney agree, a joint presentation may be made.

The presentation(s) of the investigation will allow the District Attorney and the agency involved head to learn the details of the incident so as to make informed decisions on justification, policy violations and training issues.

District Attorney responsibilities.

It is the responsibility of the District Attorney to review the case and make a determination of the following nature:

- Was the use of lethal force lawful or unlawful?
- Does the investigation and the incident need to go before a:
 - Grand Jury
 - Jury of Inquest

Agency involved responsibilities.

It shall be the responsibility of the involved officer's agency to determine if any policy or training issues need to be addressed after the investigation is concluded.

OFFICER INVOLVED LETHAL FORCE INCIDENT PROTOCOL MAJOR CRIME TEAM

Evidence

Proper standardized evidence procedures such as those utilized on all major crime scenes shall be done. The evidence shall be stored by the Lead Investigative Agency.

In-Custody Deaths

In-custody deaths may occur with a prisoner in a patrol car, at a scene, or in a correctional facility. The cause and manner of death need to be fully investigated to ascertain where, when, and how and why it occurred.

The Major Crime Team shall investigate in-custody deaths and the protocols set forth above should be followed. The lead investigative agency will be designated by the District Attorney with the consent of the designee, and shall not be the agency that was involved in the in-custody death.

**OFFICER INVOLVED LETHAL FORCE INCIDENT PROTOCOL
MAJOR CRIME TEAM**

By signing this agreement, I am committing my department/agency to follow the protocol, within the confines of Coos County, until the deadline of renewal in three years hence from the date of effect.

Chief, Bandon Police Department Date

Chief, Coos Bay Police Department Date

Sheriff, Coos County Sheriff's Office Date

Chief, Coquille Police Department Date

Chief, Coquille Tribal Police Department Date

Chief, North Bend Police Department Date

Station Commander, Oregon State Police- Coos Bay Date

Director, Oregon State Police Crime Lab- Springfield Date

Chief, Powers Police Department Date

District Attorney, Coos County Date

Medical Examiner, Coos County Date

APPENDIX

IV

JACKSON

POLICE EMPLOYEE-INVOLVED FATAL OR SERIOUS INJURY INCIDENT PROTOCOL

The investigations of incidents resulting in serious injury or death inflicted by or upon police agency employees in the exercise of their duties places extraordinary demands upon those involved, whether individuals or agencies. These investigations present a unique combination of complexities which have potential social, civil, administrative, and criminal consequences. Public interest and scrutiny is acute; employee morale rests in tenuous balance; and legal issues compound. Proper resolution requires the trust and confidence of all concerned that the investigation will be conducted impartially, thoroughly, and openly; without undue or unlawful infringement on the rights and privacy of those involved. The participating agencies recognizes their responsibilities to meet those demands, which can be accomplished only through effective management of the investigation. This requires an approach that is:

- * Well coordinated, to eliminate confusion;
- * Knowledgeable and skillful, to ensure thoroughness;
- * Defined, so that those involved and the public correctly interpret the investigative process;
- * Informative, without compromise of the investigation or an individual's rights, in order to restrict speculation and rumor by those who have an interest in the investigation.

This protocol represents an agreement among participating agencies within Jackson County concerning the manner in which police agency employee-involved fatal or serious injury incidents are investigated. This protocol may be terminated at any time by written notice from any of the signatory agencies. It is anticipated that each incident will involve unique circumstances, and flexibility must be allowed for minor modifications. This protocol, which is neither a statute, ordinance, nor regulation; is not intended to increase the civil or criminal liability of member agencies or their employees, and it shall not be construed as creating any mandatory obligations to, or on behalf of, third parties.

Adopted: March 1, 1996

Revised: February 7, 1997

I. INVOCATION OF THIS PROTOCOL

1. Automatic and Immediate

Upon the occurrence of a police employee-involved fatal or serious injury incident, this policy is immediately effective. Normally this will not include the investigation of motor vehicle incidents. Investigations of these matters must be performed under two separate investigative formats: (1) the Criminal Investigation; and (2) the Administrative Investigation.

2. Optional

This policy may be invoked upon the occurrence of any sensitive or critical event involving a police employee which may have criminal liability attached.

Examples

- A. A fatality which is not covered by this protocol.
- B. An incident in which shots are fired by, or at, a police employee which do not result in injury.
- C. A police employee-involved incident where the injuries are not fatal or do not involve serious physical injury.
- D. A police employee-involved motor vehicle incident.

II. DEFINITIONS

1. "Police Employee-Involved Fatal or Serious Injury Incidents"

Incidents occurring in Jackson County involving two or more people in which a police agency employee is involved as an actor, injured person, or custodial officer; where a fatal or serious injury occurs. Such incidents include, but are not limited to, the following:

- A. Intentional or accidental shootings, including police tactical incidents involving specialized response teams;
- B. Intentional or accidental use of any other dangerous or deadly weapons while in performance of police duties;

- C. Assaults upon sworn police officers or assaults on other police employees or volunteers who are on duty; or those working under the direct control and supervision of a police officer;
- D. Attempts by police employees to make arrests or otherwise gain physical control for a law enforcement purpose; or
- E. Any fatal or serious injury which occurs in police custody.

2. Police Agency Employee

This protocol applies to the following personnel who are affiliated with police agencies in Jackson County which have adopted this protocol.

- A. Full-time, part-time, and reserve sworn officers, whether on duty or off duty, and when acting in a law enforcement capacity.
- B. Full-time, or part-time non-sworn employees who are on duty at the time of the incident.
- C. Volunteers, who are on duty or are working under the direct control and supervision of a police officer.

3. Actor

- A. A person whose act is a "proximate cause" of a fatal or serious injury to another person; or
- B. A person who intends that an act be a "proximate " cause" of a fatal or serious injury to another person who is killed or seriously injured by another.

4. Custodial Officer

A corrections deputy or a police agency employee who has assumed physical control of another person.

5. Injured Person

A person who is killed or suffers serious injury by conduct of the actor, whether or not intentionally.

6. Proximate Cause

A cause which, in a natural and continuous sequence, produces the fatal or serious injury; without such sequence the injury would not have occurred. Reasonable foreseeability of the fatal or serious injury is not a factor relevant to this definition.

7. Fatal or Serious Injury

Death or Serious Physical Injury which creates a substantial risk of death or which cause serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

8. Agency of Primary Responsibility

The agency within whose geographical jurisdiction the incident occurs. When an incident crosses jurisdictional boundaries, the Agency of Primary Responsibility shall be jointly decided by the supervisors of the involved agencies. For all investigations of incidents occurring in the unincorporated areas of Jackson County, the Agency of Primary Responsibility shall be either the Jackson County Sheriff's Office or the Oregon State Police; depending upon which agency receives the initial call. In cases of simultaneous notifications, the Agency of Primary Responsibility shall be determined by unit members after consultation with the District Attorney or designate.

9. Employer Agency

The agency by which the involved police employee is employed or with which the person is affiliated.

10. Criminal Investigators

Those investigators assigned by the agency of primary responsibility, the employer agency, and the Major Assault/Death Investigation Unit, to conduct the criminal investigation of the incident.

11. Administrative Investigators

Those investigators assigned by the employer agency to conduct the administrative investigation of the incident.

12. Companion Officer

An uninvolved officer either assigned by the involved officer's agency or requested by the involved officer. The companion officer is to assist with the involved officer's needs, which may include: food, water, family contact, attorney contact, etc. The companion officer should provide support and encourage the involved officer to not discuss the incident until after being interviewed. If applicable, the companion officer should remove the involved officer from the scene as soon as possible.

III. OBJECTIVE

The Criminal Investigation

Investigative Team Composition and Objective:

1. The investigative team will be comprised of criminal investigators from the Major Assault/Death Investigation Unit. The participating agencies share responsibility for the integrity of the investigation, however the agency of primary responsibility has the ultimate authority to decide irreconcilable investigative issues.
2. The criminal investigation has priority over the administrative investigation and it begins immediately after an incident has occurred.
3. Its goal is to develop all available relevant information about the incident in such a manner as to minimize further trauma to the involved officer. This information will be used in two ways:
 - A. To determine the PRESENCE OR ABSENCE of criminal culpability on the part of all those involved in the incident. Specifically:
 - (1) To determine whether the conduct involved is prohibited or authorized by criminal statutes.
 - (2) If criminal conduct does exist:
 - a. Determine the identity, of the person(s) responsible for that conduct;
 - b. Determine the degree of the crime(s) ;
 - c. Determine the existence of any factual or legal defenses to the crime; and

- d. Determine the presence or absence of any factors which would mitigate or aggravate punishment for the crime
- B. To incidentally provide factual information to the employer agency's management for its internal use. While the criminal investigators do not direct their investigative attention to administrative concerns, it is recognized that the criminal investigation's results are of proper interest to agency management for its internal use, and those results are fully available for that purpose.
4. It is performed in a manner that provides both the appearance and the reality of a thorough, fair, complete and professional investigation which is free of conflicts of interest.

IV. PROCEDURE

1. The Criminal Investigation

A. Call Out Procedure:

Upon identifying an occurrence as a police employee involved fatal or serious injury incident, the supervisor of the agency of primary responsibility shall make the following notifications as promptly as possible:

- (1) When the agency of primary responsibility is the Jackson County Sheriff's Office, the Oregon State Police, the Medford Police Department, Ashland Police Department or Central Point Police Department; the supervisor shall determine the number of detectives needed from the Major Assault/Death Investigation Unit and will cause the supervisor of those detectives to be contacted.
- (2) When the agency of primary responsibility is not one of those listed above, the on scene supervisor of the agency of primary responsibility shall contact the Jackson County Sheriff's Office or the Oregon State Police and speak directly to a supervisor regarding the call out of the Major Assault/Death Investigation Unit. If a supervisor from the Oregon State Police or the Jackson County Sheriff's Office is unavailable, the on scene supervisor shall leave a telephone number and wait for a return call.
- (3) A case agent from the Major Assault/Death Investigation Unit shall be appointed by a supervisor of the agency of primary responsibility when the incident occurs within the jurisdiction of a Major Assault/Death Investigation Unit signatory agency. In other jurisdictions, the case agent shall be selected by agreement of the unit members.

- (4) Once the Major Assault/Death Investigation Unit has responded and a case agent has been assigned, the following additional notifications should be made:
- a. The District Attorney, and when unavailable a Senior Deputy District Attorney.
 - b. The medical examiner, in the event of a death.
 - c. The forensic services division of the Oregon State Police, when this is determined necessary by the case agent.

B. Scene Procedure:

- (1) Emergency life saving measures have the first priority.
- (2) If an injured person is transported to a hospital, an officer should accompany that person in the same vehicle in order to:
 - a. Locate, preserve, safeguard and maintain the chain of custody of physical evidence.
 - b. Obtain a dying declaration, excited utterance, or any other statement made by the injured person.
 - c. Maintain custody of the person if that individual has been arrested.
 - d. Provide information to medical personnel about the incident as it relates to treatment.
 - e. Identify relevant people, including ambulance and medical personnel, and obtain from them information that is relevant to the investigation.
 - f. Be available for contacts with the injured person's family, if appropriate.
- (3) The scene must be secured as soon as possible and a sufficient perimeter established to safeguard evidence. Access to the scene should be limited to those officials who must enter for an investigative purpose. A written log should be established to identify all persons entering and leaving the crime scene.

- (4) The case agent shall designate a member of the Major Assault/Death Investigation Unit to be responsible for insuring that all physical evidence is identified and collected in a legally appropriate manner, providing for an adequate chain of custody. In shooting incidents, the evidence officer will promptly, and discretely, see to the security and/or collection of all weapons, as follows:
- a. Prior to the arrival of the Major Assault and Death Investigation Unit, the first supervisor of the agency of primary responsibility to arrive upon the scene should insure that involved officers maintain their weapons in the same condition as they were at the conclusion of the incident. If necessary to accomplish this purpose, the on scene supervisor should discretely secure the weapons as described above and as soon as practicable, tender them to the evidence collection officer designated by the Major Assault/Death Investigation Unit.
 - b. In the case of officers or other individuals who were present at the time of the incident, but who indicate that they did not discharge a weapon, the evidence officer shall make note of the make, model, and serial number of each individuals weapon. The evidence officer will also make note of the type of ammunition in the officer's possession and count the number of rounds loaded in the officer's weapon, as well as other rounds in the officer's possession.
 - c. In the case of officers or other individuals who indicate that they have discharged a firearm, the evidence officer shall promptly but discretely obtain possession of the weapon. Side arms should not be removed from their holsters, instead the entire gun belt should be obtained, if necessary, to avoid removing the hand gun from the holster. If the evidence officer obtains a weapon from a police officer, that officer's supervisor should be notified so that a replacement weapon can be provided if appropriate. Uniforms that have any potential evidentiary value should be seized in a discreet manner. Investigators have to remain aware of the officer's feelings during the scizure of any weapons or uniforms, and try to lower their anxiety by explaining the process to them.

C. Transporting and Interviewing Involved Officers:

- (1) Officers who were present at the scene at the time of the incident, whether actors or witnesses, will be relieved of their duties at the scene as promptly as possible and shall be taken to their own police station unless other suitable and agreeable arrangements are made for them.
- (2) While awaiting interviews, involved officers are encouraged to relax and to carefully reflect upon what occurred. They may wish to make notes in preparation for the investigative interview. If such notes are made, they should be tendered to the interviewing officer at the conclusion of the interview as evidence.
- (3) The interviewees will be considered witnesses unless circumstances dictate otherwise.
- (4) Prior to conducting the interview, the interviewer shall be briefed by the case agent and, if possible, view the scene.
- (5) The interview shall be conducted by detectives assigned to the Major Assault/Death Investigation Unit. Ideally, each interview shall be conducted by two detectives, at least one of whom shall be from an agency other than the employer agency.
- (6) Interviews will be conducted separately, and in a comfortable setting. Interviewers must remain aware of the perceptual distortions associated with traumatic incidents, and how these distortions may vary between officers. In depth interviews may have to occur some time after the incident, depending upon the officers condition.
- (7) Interviews will be tape recorded.
- (8) If the interview is non-custodial; the involved officer should be made aware that he/she is not in custody, need not answer questions, and that a refusal to answer will not be the basis of a disciplinary action.
- (9) If the interview is custodial in nature; the officer shall be given Miranda warnings.

D. Intoxicant Testing:

- (1) Police employees have the same rights and privileges that any civilian would have regarding intoxicant testing. Employees should be requested to voluntarily provide blood and/or urine samples for intoxicant testing.
- (2) If police employees refuse to voluntarily provide blood and/or urine, and it is necessary to obtain these, then the District Attorney's office should be contacted.

V. AUTOPSY

An autopsy shall be performed whenever a death results from a police employee-involved fatal incident. A member of the investigative team shall attend the autopsy. A representative from the Oregon State Police Forensic Laboratory will attend the autopsy when appropriate, as determined by the investigative team.

VI. ROLE OF THE DISTRICT ATTORNEY

The District Attorney's Office has the following roles in the incident investigation:

1. Participate co-equally with the investigative team performing the criminal investigation.
2. Assist and advise the investigative team on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses, etc.
3. Upon completion of the criminal investigation, analyze the facts of the incident as well as the relevant law to determine if criminal laws were violated. If so, prosecute as appropriate.
4. It should be noted that the District Attorney has ultimate authority for the prosecution of criminal cases, and specific shared responsibility with the medical examiner in death investigations.

VII. NEWS MEDIA RELEASES

1. Initial press releases are the responsibility of the Agency of Primary Responsibility after consultations with the case agent.

2. All subsequent press release are the responsibility of the District Attorney. This will assist in minimizing the release of information which may jeopardize the investigation or subsequent prosecution.
3. If the involved officer is not an employee of the Agency of Primary Responsibility; the employer agency may choose to inform the public regarding the welfare and administrative status of the involved officer.

VIII. ACCESS TO REPORTS AND EVIDENCE

1. Material which is created or collected as a result of the criminal investigation will be made available to other agencies or individuals at the conclusion of the investigation or at the direction of the District Attorney. This will include administrative investigators, the involved officer and their attorney.
2. The material will include:
 - A. Reports
 - B. Access to physical evidence
 - C. Photographs and diagrams
 - D. Audio and video tape recordings
3. At the conclusion of the initial investigations, all investigation reports will be submitted to the District Attorney by the case agent for a complete review.
4. When the District Attorney's office concludes that the physical evidence collected by the criminal investigators is no longer needed for criminal law purposes, the employer agency shall be notified of that decision so it can assume responsibility for preservation of such evidence if it desires.

IX. THE ADMINISTRATIVE INVESTIGATION

1. Investigative Priority

While both the criminal investigation and the administrative investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the criminal investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the criminal investigation from being compromised by an untimely exercise of the employer agencies' administrative rights.

2. Information Excluded From The Criminal Investigation

Interview statements, physical evidence, toxicology test results, and investigative leads which are obtained by administrative investigators by ordering police agency employees to cooperate, shall not be revealed to criminal investigators without approval of the District Attorney's office. Other results of the administrative investigation may or may not be privileged from disclosure to others, including the criminal investigators, depending upon applicable law.

POLICE EMPLOYEE-INVOLVED FATAL OR SERIOUS INJURY INCIDENT
Patrol Supervisor's Checklist

1. Life saving efforts - first priority.
2. Request additional patrol officers, as necessary.
3. If an injured person is transported to a hospital, an officer should accompany that person in the same vehicle in order to:
 - a. Locate, preserve, safeguard and maintain the chain of custody of physical evidence.
 - b. Obtain a dying declaration, excited utterance, or any other statement made by the injured person.
 - c. Maintain custody of the person if that individual has been arrested.
 - d. Provide information to medical personnel about the incident as it relates to treatment.
 - e. Identify relevant people, including ambulance and medical personnel, and obtain from them information that is relevant to the investigation.
 - f. Be available for contacts with the injured person's family, if appropriate.
4. Ashland Police Department, Central Point Police Department, Jackson County Sheriff's Department, Medford Police Department, and Oregon State Police Department: notify your detective supervisor and request Major Assault/Death Investigation Unit call out.

All other agencies: call the Jackson County Sheriff's Office or the Oregon State Police Office and speak to a detective supervisor to request Major Assault/Death Investigation Unit call out.
5. Determine what responding/scene officers have learned and what they've done.
6. LIMIT QUESTIONS of involved officers and other witnesses to those necessary for public safety and scene management.
7. Arrange for radio broadcasts on outstanding suspect, vehicle, witnesses, etc.
8. Protect sensitive investigative information, including names of involved officers. Use caution on radio broadcasts. Use secure phone when possible.

9. Locate, identify, and sequester civilian witnesses for detectives' interviews.
10. The scene must be secured as soon as possible and a sufficient perimeter established to safeguard evidence. Access to the scene should be limited to those officials who must enter for an investigative purpose. A written log should be established to identify all persons entering and leaving the crime scene.
11. Insure that involved officers maintain their weapons in the same condition as they were at the conclusion of the incident. If necessary to accomplish this purpose, the on scene supervisor should discretely secure the weapons, and as soon as practicable, tender them to the evidence collection officer designated by the Major Assault/Death Investigation Unit. Seized weapons must be replaced as soon as practical.
12. Collect your information and thoughts to brief investigators.

DALE W. PENN
DISTRICT ATTORNEY



STEPHEN E. DINGLE
THOMAS M. HART
DIANA L. MOFFAT
CIRCUIT COURT TRIAL TEAM LEADERS

JEAN L. KUNKLE
DISTRICT COURT CHIEF DEPUTY
PETER J. BATTEN, M.D.
MEDICAL EXAMINER
CARL R. STECKER
SUPPORT ENFORCEMENT CHIEF DEPUTY
PAMELA K. MIDDLESTETTER
VICTIM ASSISTANCE DIRECTOR

MARION COUNTY DISTRICT ATTORNEY
MARION COUNTY COURTHOUSE, SALEM, OREGON 97301

January 8, 1996

Daryl Garrettson
1313 N.W. 19th Avenue
Portland, Oregon 97209

RE: Procedures in Salem Police Department Officer Involved Shootings

Dear Daryl:

The purpose of this letter is to reduce to writing the agreement reached during our December 4th meeting. Everyone agreed that this procedure is to be followed in the majority of officer involved shootings. For purposes of this procedure "involved officer" is defined as an officer who fired a weapon, or made the decision to fire a weapon. The definition does not include observers.

The procedure, in chronological order, is as follows:

1. The involved officer(s) will contact their family members regarding the incident.
2. Salem Police Department will immediately remove/obtain clothing, weapons and gun leather from the shooting officer(s). The Salem Police Department will provide the involved officer(s) a replacement weapon pursuant to Salem Police Department policy.
3. The officer(s) will consult with the union attorney (via phone) regarding the issue of a blood/urine draw.
4. After consultation, the involved officer(s) will notify Salem Police Department concerning their consent to the blood/urine draw.
5. If consent is provided the Salem Police Department will arrange and conduct the blood/urine draw without any interrogation or questioning.
6. After the blood/urine draw, the involved officer(s) will be afforded an opportunity to view the scene. The view of

Daryl Garrettson
January 8, 1996
Page 2

the scene will not interfere with the integrity of the crime scene investigation. The involved officer may view the scene accompanied by his/her union attorney if he/she desires.

7. After a view of the scene and an opportunity to consult with the union attorney, the involved officer(s) will provide a preliminary statement. A preliminary statement will describe the basic events of the incident. Conclusions will generate questions to clarify the actual facts which support the conclusion.
8. The involved officer(s) will provide a detailed statement to the investigating agency within 24 hours of the event.

Both of the statements provided in (7) and (8) above shall be voluntary, and not pursuant to any department directive. Neither statement shall be construed as granting any type of immunity from administrative or criminal sanctions.

Thank you for your assistance in resolving this matter. I will provide copies of this understanding to Salem Police Department. Please provide copies to Terry Locke and the union.

Sincerely,

/s/ Dale W. Penn

DALE W. PENN
Marion County District Attorney

DWP:jlc

APPENDIX

V

Resource List

International Association of Chiefs of Police

515 North Washington St.
Alexandria, VA 22314
(703) 836-6767
(800) THE IACP
<http://www.theiacp.org/>

National Sheriff's Association

1450 Duke Street
Alexandria, Virginia, 22314-3490
(703) 836-7827
<http://www.sheriffs.org/>

Oregon State Sheriff's Association

1-800-624-4405
<http://www.oregonsheriffs.org/>

Metro Chaplaincy Program

P.O. Box 187
Beaverton, Oregon 97075
(503)643-8686
<http://www.metropolicechaplaincy.org/>

Oregon Association of Chiefs of Police

1191 Capitol St. NE
Salem, OR 97301
(503) 315-1411
1-800-784-2867
<http://www.policechief.org/>

Oregon State Police

255 Capitol St. N.E.
400 Public Service Bldg.
Salem, OR 97310
(503) 378-3720
<http://www.osp.state.or.us/>

APPENDIX

VI

To: Daryl
From: Deb
Date: January 5, 2005
Subject: Use of Force Contract Language Research

Below is a list of the Associations/Guilds in the Metro area whose Collective Bargaining Agreements I researched for "use of force" language. It was Mark's suggestion, at least initially, to limit the search to the Metro area, as I do not have electronic copies of "all of our contracts," which means I would have to track down the hard copies and then read through them, or track down the electronic copies and search through them, which would have taken me even more time to get you something you could use. These are all contracts of which I have electronic copies, so I used a word search feature using "use of force," "force," "lethal," and "traumatic." In some cases there was nothing in the contract, but I wanted to indicate I had checked them. Please let me know if the following will suffice, or if you want me to continue the search through the rest of our contracts.

Battle Ground Police Officers Association *(see below)*
Beaverton Police Association *(see below)*
Canby Police Association *(see below)*
Clark County Deputy Sheriffs Guild *(see below)*
Cornelius POA *(nothing)*
Fairview POA *(see below)*
Forest Grove Police Association *(nothing)*
Gladstone Police Association *(see below)*
Gresham POA *(nothing)*
Hillsboro POA *(see below)*
Lake Oswego POA *(see below)*
Milwaukie Police Employees Association *(see below)*
Oregon City Police Employees Association *(see below)*
Sherwood POA *(see below)*
Tigard POA *(nothing)*
Troutdale POA *(see below)*
Tualatin POA *(see below)*
Washington County POA *(nothing)*
Washougal POA *(nothing)*

Beaverton Police Association (CBA 7/1/02 – 6/30/05)

ARTICLE 19 - DISCIPLINE AND DISCHARGE

19.3. Use of Deadly Force Situations. Employees involved in the use of deadly force shall be advised of their rights to and shall be allowed to consult with an

Association representative and/or attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative and with Association Counsel shall not unduly delay the giving of the statement.

Canby Police Association (CBA 2003-2006)

ARTICLE 6 - DISCIPLINE AND DISCHARGE

(e) In situations involving the use of force, the employee shall have the right to consult with an Association representative or attorney prior to being required to give an oral or written statement about the use of force.

Clark County Deputy Sheriffs Guild (CBA 2001-2003)

17.3.1.4 In situations involving the use of force, the employee involved in the use of force shall have the right to consult with a Guild representative or attorney prior to being required to give an oral or written statement about the use of force. The interview shall not be unreasonably delayed due to the employee's election to consult with the representative or attorney.

Fairview Police Officers' Association (CBA expires 12/31/06)

APPENDIX B

INTERVIEWS/INVESTIGATIONS

(e) In situations involving the use of deadly force, the employee shall have the right to consult with an Association representative or attorney prior to being required to give an oral or written statement about the use of deadly force. All employees involved in the use of deadly force shall be provided the opportunity to meet with a psychologist, at the City's expense, for the purpose of debriefing. City and the Association will mutually agree to a psychologist for this purpose. In any event, these meetings shall be covered by the psychotherapist/patient privilege and information disclosed in these meetings shall not be attainable or useable by the City for any purpose;

Gladstone Police Association (CBA 2002-2007)

Section 2. Use of Force Situations.

(A) Deadly Force. Employees involved in the use of deadly force situations shall be allowed to consult with an Association Representative or Attorney prior to being required to give an oral or written statement about the use of

force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement for more than twenty-four (24) hours.

- (B) Traumatic Incidents – Debriefing. In all cases where any employee has been seriously injured, dies, or is directly involved in a traumatic incident while in the performance of their duty, all employees directly involved shall have the opportunity to undergo a traumatic incident debriefing. The City shall have the authority to require an involved employee to undergo debriefing. The term “directly involved” means those employees who had a direct involvement in the initial traumatic incident.

Such debriefing will be for the benefit of the employee. The debriefing shall be confidential and shall not be divulged to the Department in any Department investigation of the incident. In addition, these meetings shall be covered by the psychotherapist/patient privilege and information disclosed in these meetings shall not be attainable or useable by the City for any purpose.

The City shall utilize the professional services of the Oregon Critical Response Team for traumatic incident debriefings. The cost for the debriefing shall be borne by the City. The City has sole discretion concerning the payment for subsequent debriefings.

Hillsboro Police Officers’ Association (CBA 7/1/04 – 6/30/06)

ARTICLE 16 - DISCIPLINE AND DISCHARGE

B. Use of Deadly Force Situations. Employees involved in the use of deadly force shall be advised of their rights to and shall be allowed to consult with an Association representative or attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement.

Lake Oswego Police Officers’ Association (CBA 7/1/03 – 6/30/05)

APPENDIX B

POLICE OFFICERS’ BILL OF RIGHTS

8. Use of Force Situations: When an employee is involved in the use of deadly force, s/he shall give a brief statement to the investigating officer to help identify any potential witnesses and the scope of the scene.

Employees involved in the use of deadly force shall be advised of their rights to, and allowed to consult with an Association representative or attorney prior to

being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement.

McMinnville Police Association (CBA 2002-2005)

**ARTICLE 10
DISCIPLINE AND DISCHARGE**

Section C. Use of Force Situations: Employees involved in the use of deadly physical force shall be advised of their rights and allowed to consult with an attorney (or agent) prior to being required to give an oral or written statement about the use of said deadly physical force. Such right to consult with an attorney or agent shall not unduly delay the giving of the statement or hinder the immediate processing of an ongoing incident.

Milwaukie Police Employees Association (CBA 7/1/04 – 6/30/07)

**Exhibit A
INVESTIGATORY INTERVIEW**

6. Use of Deadly Force Situations. Employees involved in the use of deadly force shall be advised of their rights to and allowed to consult with an Association representative or attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement.

Oregon City Police Employees' Association (7/1/04 – 6/30/07)

ARTICLE 26: DISCIPLINE AND/OR DISCHARGE

26.5 General Procedures.

B. Use of Deadly Force Situations. Employees involved in the use of deadly force shall be advised of their rights to and shall be allowed to consult with an Association representative or attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement.

C. Section 26.5 shall not apply to a criminal investigation conducted by another law enforcement agency. This section shall not prevent informal inquiry following an event which will be formally investigated in order to ascertain what occurred to the best of the involved officer's ability to recall, provided however, that the City shall only rely upon the involved officer's formal interview statements for all administrative purposes.

ARTICLE 28: TRAUMATIC INCIDENTS

28.1 Debriefing. In all cases where any employee has been seriously injured, dies or is directly involved in a traumatic incident while in the performance of their duty, all employees directly involved shall have the opportunity to undergo a traumatic incident debriefing with a physician/psychologist designated jointly by the Association and the City. The term "directly involved" means those employees that had direct involvement in the initial traumatic incident. The City shall have the authority to require an involved employee to undergo debriefing. The purpose of this debriefing will be to allow the employee(s) to express feelings and to deal with the moral/ethical and/or psychological after effects of the incident. The debriefing shall be confidential and shall not be divulged to the Department in any Department investigation of the incident. The cost of the physician/psychologist's services will be borne by the City and/or the appropriate insurance carrier of those services provided.

28.2 Administrative Leave. Employees involved in a traumatic incident and/or involved in the debriefing process may be placed on Administrative Leave. The length of Administrative Leave shall be determined by the City after consultation with the physician/psychologist concerning his/her findings and recommendations with respect to the employee's fitness for duty. Administrative Leave shall be defined as: time off for or reassignment without loss of pay or benefits to the employee. The type of Administrative Leave will be determined by the City taking into account the type of incident and the recommendation of the person conducting the debriefing.

Sherwood Police Officers Association (CBA expired 6/30/04)

ARTICLE 29 – MISCELLANEOUS

Section 2. Use of Force Situations.

Employees involved in the use of deadly force, as defined by the 1997 Sherwood Police Department policy manual, shall be advised of their rights to, and allowed to consult with, an Association representative or attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement.

All employees involved in the use of force or a traumatic incident shall be provided the opportunity to meet with a psychologist, at the City's expense, for the purpose of debriefing. The employee shall be allowed to choose the therapist he/she wants to visit and shall notify the City. If the City objects, the employee may either choose to see another therapist mutually

agreeable between the employee and the City, or pay for the therapy himself/herself. In either event, these meetings shall be covered by the psychotherapist/patient privilege and information disclosed in these meetings shall not be attainable or useable by the City for any purpose.

Troutdale Police Officers' Association (CBA 7/1/01 to 6/30/04)

Addendum A
INTERVIEWS/INVESTIGATIONS

- (e) In situations involving the use of deadly force, the employee shall have the right to consult with an Association representative or attorney prior to being required to give an oral or written statement about the use of deadly force. All employees involved in the use of deadly force shall be provided the opportunity to meet with a psychologist at the City's expense, for the purpose of debriefing. The employee shall be allowed to choose the therapist he/she wants to visit and shall notify the City. If the City objects, the employee may either choose to see another therapist mutually agreeable between the employee and the City, or pay for the therapy himself/herself. In either event, these meetings shall be covered by the psychotherapist/patient privilege and information disclosed in these meetings shall not be attainable or useable by the City for any purpose.

Tualatin Police Officers Association (CBA expires 6/30/04)

ARTICLE 34 - MISCELLANEOUS

Section 2. Use of Force Situations.

Employees involved in the use of deadly force pursuant to Chapter 13 of the policy manual shall be advised of their rights to, and allowed to consult with, an Association representative or attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement.

APPENDIX VII



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Guidelines For Disclosure and Reporting of Information on Criminal Proceedings

**Statement of Principles Governing Certain Lawyer-Press-Broadcasters
Relationships**

OSB
2

Oregon's Bill of Rights provides both for fair trials and for freedom of the press. These rights are basic and unqualified. They are not ends in themselves but are necessary guarantors of freedom for the individual and the public's rights to be informed. The necessity of preserving both the right to fair trial and the freedom to disseminate the news is of concern to responsible members of the legal and journalistic professions and is of equal concern to the public. At times these two rights appear to be in conflict with each other.

In an effort to mitigate this conflict, the Oregon State Bar, the Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters have adopted the following statement of principles to keep the public fully informed without violating the rights of any individual.

1. The news media have the right and the responsibility to print and to broadcast the truth.
2. However, the demands of accuracy and objectivity in news reporting should be balanced with the demands of fair play. The public has a right to be informed. The accused has the right to be judged in an atmosphere free from undue prejudice.
3. Good taste should prevail in the selection, printing and broadcasting of the news. Morbid or sensational details of criminal behavior should not be exploited.
4. The right of decision about the news rests with the editor or news director. In the exercise of judgment he should consider that:
 - (a) an accused person is presumed innocent until proved guilty;
 - (b) readers and listeners are potential jurors;
 - (c) no person's reputation should be injured needlessly.
 - (d) Reporting on the eve of trial may prejudice potential jurors. Just prior to trial, stories reviewing a suspect's criminal history, incriminating statements, or other prejudicial detail should be avoided whenever possible.

5. The public is entitled to know how justice is being administered. However, it is unprofessional for any lawyer to exploit any medium of public information to enhance his side of a pending case. It follows that the public prosecutor should avoid taking unfair advantage of his position as an important source of news; this shall not be construed to limit his obligation to make available information to which the public is entitled.

In recognition of these principles, the undersigned hereby testify to their continuing desire to achieve the best possible accommodation of the rights of the individual and the rights of the public when these two fundamental precepts appear to be in conflict in the administration of justice.

(Oregon State Bar, Oregon Newspaper Publishers Association, Oregon Association of
Broadcasters)

Guidelines For Disclosure and Reporting of Information on Criminal Proceedings

OSB
3

It is generally appropriate to disclose or report the following:

1. The arrested person's name, age, residence, employment, marital status and similar biographical information.
2. The charge.
3. The amount of bail.
4. The identity of and biographical information concerning both complaining party and victim.
5. The identity of the investigating and arresting agency and the length of the investigation.
6. The circumstances of arrest, including time, place, resistance, pursuit and weapons used.

It is rarely appropriate to disclose for publication or to report prior to the trial the following:

1. The contents of any admission or confession, or the fact that an admission or confession has been made.
2. Opinions about an arrested person's character, guilt or innocence.
3. Opinions concerning evidence or argument in the case.
4. Statements concerning anticipated testimony or the truthfulness of prospective witnesses.
5. The results of fingerprints, polygraph examinations, ballistic tests or laboratory tests.
6. Precise descriptions of items seized or discovered during investigation.
7. Prior criminal charges and convictions.
8. Evidentiary details that were excluded in prior judicial proceedings in the same case.

Photography

1. Photographs of a suspect may be released by law enforcement personnel provided it doesn't interfere with enforcement of the law. It is proper to disclose such information as may be necessary to enlist public assistance in apprehending fugitives from justice. Such disclosure may include photographs as well as records of prior arrests and convictions.
2. Law enforcement and court personnel should not prevent the photographing of defendants when they are in public places outside the courtroom. However, they should not pose the defendant.

The above Guidelines are supplemental to and should be interpreted with the 'Oregon Bar-Press-Broadcasters Joint Statement of Principles' adopted in 1962.

The Guidelines are cautionary, not mandatory. They do not prohibit release of, or publication of, information needed to identify or aid in the capture of a suspect or information required in the vital public interest after arrest. Neither do they proscribe publication of information which is already in the public domain.